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IN THE

Supreme Court of the United States

Stephen P. Medeiros,

Petitioner,

v.

W. Michael Sullivan, Director of the Rhode Island Department of Environmental Management, Atlantic States Marine Fisheries Commission, and United States of America.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a person directly harmed by the federal government's commandeering of a state government in violation of the Tenth Amendment and principles of federalism is nonetheless categorically prohibited from challenging that Tenth Amendment violation.

PARTIES TO THE PROCEEDING BELOW

Frederick J. Vincent appeared as an appellee below in his capacity as interim director of the Rhode Island Department of Environmental Management ("DEM"). See Pet. App. 1a. He replaced Jan Reitsma, who appeared as a defendant in the district court and as an appellee at the commencement of the First Circuit appeal in his capacity as director of DEM. See ASMFC C.A. Br. (cover).

W. Michael Sullivan is substituted as respondent in this Court. On April 5, 2005, he was appointed as the director of DEM, replacing Frederick J. Vincent.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stephen P. Medeiros respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW AND JURISDICTION

The opinion of the United States Court of Appeals for the First Circuit (Pet. App. 1a-17a), dated December 12, 2005, is published at 431 F.3d 25. The district court's order granting respondents' motion for summary judgment (Pet. App. 18a-33a) is published at 327 F. Supp. 2d 145. On March 6, 2006, Justice Souter extended the time to file this petition to and including March 27, 2006. App. 05A811. This Court has jurisdiction under 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The Tenth Amendment to the Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The relevant statutory and regulatory provisions are reproduced in the Appendix at 34a-53a.

STATEMENT

Petitioner brought this suit to challenge a federal statute that required Rhode Island to adopt a fisheries regulation that harms petitioner's business as a commercial fisherman. Petitioner challenged the federal statute as violating the Tenth Amendment's anti-commandeering principle. The lower courts did not doubt that petitioner had been injured by the federal mandate. They nonetheless held that petitioner lacked standing because private individuals are powerless to raise such a Tenth Amendment challenge. Deeming the contrary holdings of the Seventh and Eleventh Circuits – which allow private plaintiffs to litigate such a claim – "problematic," the

First Circuit invited this Court to revisit this "complex [] issue of constitutional law," Pet. App. 17a, noting that the Court had previously granted certiorari to decide the question, but ultimately left it unresolved, *id.* 16a (citing *Pierce County* v. *Guillen*, 537 U.S. 129, 148 n.10 (2003)).

1. In 1942, Congress approved an interstate compact among the Atlantic coast states "to promote the better utilization of the fisheries * * * of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries." Act of May 4, 1942, Pub. L. No. 77-539, 56 Stat. 267, 267. The compact created the Atlantic States Marine Fisheries Commission ("ASMFC" or "Commission"), which, as originally established, had no actual authority over the member states. Instead, the Commission was limited to "recommend[ing] to the governors and legislatures of the various signatory states, legislation dealing with the conservation of * * * fisheries." 56 Stat. at 268. Such recommendations took the form of interstate fishery management plans. *Ibid.*; ASMFC Rules and Regulations, art. vi, *available at* http://www.asmfc.org (visited Mar. 27, 2006). While each member state had "the opportunity to participate in" recommended fishery management plans, *id.* art. vi, § 4, the states' only affirmative duty was to contribute to the Commission's operating budget, 56 Stat. at 269.

In 1993, Congress enacted the Atlantic Coastal Fisheries Cooperative Management Act ("Act"), Pub. L. No. 103-206, 107 Stat. 2419 (codified at 16 U.S.C. 5101-08). In essence, the Act created a federal mandate that member states comply with the Commission's recommendations. The Act requires the Commission to "adopt coastal fishery management plans" and to "specify the requirements necessary for States to be in compliance with [a] plan." 16 U.S.C. 5104(a)(1). The states must then "implement and enforce the measures of such plan[s]," *id.* § 5104(b)(1), by "enact[ing] and implement[ing] laws or regulations as required to conform with the provisions

of a coastal fishery management plan and to assure compliance with such laws or regulations," *id.* § 5102(10).

The Act further requires the Commission to monitor the states' compliance with these fishery management plans; if the Commission finds that a state "has not implemented and enforced such a plan," it is required to notify the U.S. Secretaries of the Interior and Commerce. *Id.* § 5105(a)-(b). If the Secretary of Commerce finds that (i) a state "has failed to carry out its responsibility" to enact these laws, and (ii) that "the measures that the State has failed to implement and enforce are necessary for the conservation of the fishery," then the Secretary must "declare a moratorium on fishing in the fishery in question within the waters of the noncomplying state." *Id.* § 5106(a)(1)-(2), (c)(1). Once a moratorium is in place, all "fishing for any species of fish to which the moratorium applies" is prohibited, with violators subject to both civil and criminal penalties that may include forfeiture of their vessels, gear, and cargo. *Id.* § 5106(e)-(g). The state can free itself from the moratorium only by enacting and enforcing the Commission's plan. *Id.* § 5106(c)(2).

2. Lobsters are found along much of the Atlantic coast and are especially abundant along the inshore areas from Maine to New Jersey. See ASMFC American Lobster Fact Sheet, *available at* http://www.asmfc.org (visited Mar. 22, 2006). These lobster fisheries are among the Atlantic coast's most valuable, with commercial landings in 1999 exceeding 87 million pounds, worth approximately $323 million. *Ibid.* Nearly eighty percent of the annual lobster catch is landed in state waters, which extend from the coastline to three miles offshore. *Ibid.*

The first plan for the management of the American lobster fishery was the Interstate Fishery Management Plan for American Lobster, promulgated by the Commission in the 1970s. ASFMC C.A. Br. 6. In 1997, the Commission adopted Amendment 3 to the Plan, which as relevant here restricts "fishermen using gear or methods other than traps